

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

GILBERT L. SPURLOCK,

Plaintiff,

v.

**Civil Action No. 3:09-0035
(Lead Case)**

**COLONEL DANA R. HURST and
U.S. ARMY CORPS OF ENGINEERS,**

Defendants.

**MEMORANDUM OPINION AND ORDER
AND STATEMENT OF REASONS**

Plaintiff has noticed an appeal of the judgment order issued in this case granting the defendants' motion to dismiss. The Court has today denied plaintiff leave to proceed on appeal *in forma pauperis*.

Federal Rule of Appellate Procedure 24 governs plaintiff's ability to proceed *in forma pauperis* and provides pertinently as follows:

(a) Leave to Proceed in Forma Pauperis.

(1) Motion in the District Court. Except as stated in Rule 24(a)(3), a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court. The party must attach an affidavit that:

(A) shows in the detail prescribed by Form 4 of the Appendix of Forms the party's inability to pay or to give security for fees and costs;

(B) claims an entitlement to redress; and

(C) states the issues that the party intends to present on appeal.

(2) Action on the Motion. If the district court grants the motion, the party may proceed on appeal without prepaying or giving security for fees and costs, unless a statute provides otherwise. If the district court denies the motion, it must state its reasons in writing.

(3) Prior Approval. A party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless:

(A) the district court--before or after the notice of appeal is filed--certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding; or

(B) a statute provides otherwise.

Fed. R. App. Proc. 24.

As noted in earlier appeals of orders in this case, the United States instituted an action on January 14, 2009, against the plaintiff. The United States seeks “to enjoin . . . [plaintiff] from the repetitive filing of vexatious and frivolous actions against” it. (Compl. ¶ 1). Plaintiff’s many civil actions originated with \$407.76 in disputed credit card charges attributed to him which, he claims, are owed by his former employer, the United States Army Corps of Engineers. Since incurring those charges, plaintiff has filed repetitive, frivolous civil actions. These actions were the subject of the order of dismissal.

On October 27, 2008, the Honorable Robert C. Chambers denied plaintiff leave to proceed on appeal *in forma pauperis*, concluding as follows:

Plaintiff tried to sue federal defendants in state court, and these actions were removed and dismissed for lack of jurisdiction. Plaintiff failed to present any plausible legal basis support jurisdiction; he merely continues to complain of what he perceives to be misconduct by federal agencies and officers. The Court **FINDS** that these appeals are frivolous and not in good faith..

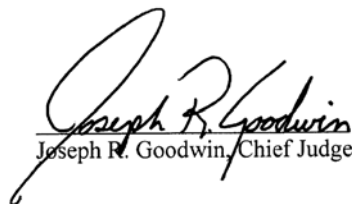
Spurlock v. U.S. Army Corps of Engineers, No. 3:07-0643, slip op. at 2 (S.D. W. Va. Oct. 27, 2008).

On May 7, 2009, I issued a Memorandum Opinion and Order and Statement of Reasons again denying Mr. Spurlock leave to proceed *in forma pauperis* because it appeared he was persisting in the same litigation abuse observed by Judge Chambers. This troubling history necessarily plays a role in the decision concerning whether the instant appeal is taken in bad faith.

After careful consideration, the court **FINDS** and **CERTIFIES** that plaintiff's appeals are a product of a continuing, bad-faith intention to further prolong his vexatious litigation practices . Accordingly, the Court **DENIES** plaintiff leave to appeal *in forma pauperis* pursuant to Rule 24(a)(1) through (3), whichever is deemed applicable under the circumstances.

The court **DIRECTS** the Clerk to send a certified copy of this Memorandum Opinion and Order and Statement of Reasons to Magistrate Judge Mary E. Stanley, the Clerk of the United States Court of Appeals for the Fourth Circuit, counsel of record, and any unrepresented party.

ENTER: October 29, 2009


Joseph R. Goodwin, Chief Judge